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OFFICE OF PETITIONS

In re Application of  
Mattson et al.  
Application No. 10/673,566  
Filed: September 30, 2003  
Attorney Docket Number: 027557-106

DECISION REFUSING STATUS  
UNDER 37 CFR 1.47(a)

This is in response to the petition under 37 CFR §1.47(a), filed February 26, 2004.

The petition is **dismissed**.

Rule 47 applicant is given TWO (2) MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR §1.47(a)," and should address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventors. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR §1.136(a).

The above-identified application was filed on September 30, 2003, without a signed oath or declaration. Accordingly, on December 23, 2003, a "Notice to File Missing Parts of Nonprovisional Application - Filing Date Granted," requiring for the purposes of this decision, an executed oath or declaration in compliance with §1.63, and a surcharge for its late filing. This Notice set an extendable two-month period for reply of February 23, 2004.

In response, on February 26, 2004, applicant submitted a \$130.00 surcharge for late filing oath or declaration fee, petition, and a partially executed declaration. To make timely a one month extension of time was provided. A review of the record shows a petition fee was not received. Accordingly, deposit account no. 02-4800 is being charged the \$130.00 petition fee.

A grantable petition under 37 CFR §1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been

presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116 ; (3) the petition fee; and, (4) a statement of the last known address of the non-signing inventor. Applicant lacks item (1) as set forth above.

As to item (1), where an inventor cannot be reached as in the case of inventor Ulf Mattsson, rule 47 applicant must demonstrate diligent efforts were made to find or reach a non-signing inventor. See MPEP 409.03(d). The statements made in the petition do not illustrate "diligent effort" was made to locate inventor Mattsson. Although rule 47 applicant indicates the assignee was contacted to ascertain the address of inventor Mattsson, these actions are not sufficient to establish diligent effort was made to locate inventor Mattsson. Petitioner also indicates attempts to contact inventor Mattsson via electronic mail were not successful. Did rule 47 applicant search for inventor via an electronic database? Did applicant ask the other inventor or colleagues for the address of inventor Mattsson? The e-mail correspondence from Esther Grant, patent administrator indicates that inventor Mattsson may have relocated to Sweden. Did rule 47 applicant attempt to obtain a more current address in Sweden? Applicant should present a signed statement of facts from a person that has first hand knowledge of the diligent efforts made to locate the non-signing inventor. Applicant should present copies of documentary evidence that support a finding that the non-signing inventor could not be found or reached and the steps taken to locate the non-signing inventor. Accordingly, Rule 47 applicant failed to show or provide proof the inventor can not be reached.

Thus, rule 47 applicant has failed to provide sufficient evidence to warrant a finding of diligent effort.

If applicant provides sufficient evidence that diligent effort has been made to locate the inventor and inventor can not be located, 47 applicant is not required to send a copy of the application.

Further correspondence with respect to this matter should be addressed as follows:

By mail:

Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
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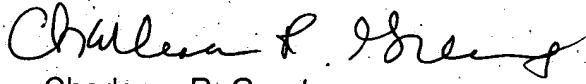
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Telephone inquiries related to this decision may be directed to the undersigned at (703) 306-0251.

A handwritten signature in cursive script, appearing to read "Charlema R. Grant".

Charlema R. Grant  
Petitions Attorney  
Office of Petitions